

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 792 of 1986****For Approval and Signature:****HONOURABLE MR.JUSTICE C.K.BUCH****HONOURABLE MR.JUSTICE SHARAD D.DAVE**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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STATE OF GUJARAT - Appellant(s)**Versus****PRAGNESHBHAI MANILAL PATEL & 1 - Opponent(s)**

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Appearance :

Mr.K.C.Shah, APP for Appellant(s) : 1,

MR SUNIL K SHAH for Opponent(s) : 1,

None for Opponent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH**and****HONOURABLE MR.JUSTICE SHARAD D.DAVE****Date : 05/09/2006****ORAL JUDGMENT**

(Per : HONOURABLE MR.JUSTICE C.K.BUCH)

1. This appeal is against the order of acquittal passed by the learned Additional City Sessions Judge, Ahmedabad (Court No.2) in Sessions Case No.114 of 1985 dated 31st March, 1986.

2. Mr.K.C.Shah, learned APP has taken us through the relevant part of the judgment and oral as well as documentary evidence laid during the course of trial including the evidence of two material eye witnesses i.e., Maheshbhai and Baldevbhai. Learned trial Judge, after appreciating the evidence, acquitted the accused from the offences punishable under Sections 436 and 427 of Indian Penal Code.

3. To appreciate the say of Mr.Shah, it would be proper for us to state the case that was placed before the trial Court by the prosecution in brief.

3.1 As per the prosecution, on 21st March, 1985 at about 1.45 a.m., to 2.00 p.m., a cabin occupied and used by the complainant Parsottambhai J. Thakore was set on fire by the accused persons. The cabin was being used for tailoring work by the complainant in the name and style of 'Tarun Tailors' and it was situated near Patel market on Budharpura road, Ambawadi, Ahmedabad. There was litigation between the landlords i.e., owners of the land where the cabin was erected and the complainant Parsottambhai. The complainant was having cabin on the margin land

situated adjoining to Patel market and the land was given to the complainant by the father of the accused on monthly rent of Rs.25/-. The complainant Parsottambhai has instituted H.R.P.Suit No.3986 of 1984 against the father of accused persons and one Chandrakantbhai Atmaram in the Small Causes Court, Ahmedabad in the month of October, 1984 and the relations between the accused and the complainant were strain. The complainant had obtained interim prohibitory relief in H.R.P.Suit No.3986 of 1984, but on the date of incident, it is alleged that the accused set the cabin i.e. Tarun tailors on fire by sprinkling petrol. The act of the accused had caused a great damage to the property and the business that the complainant was doing and the loss was assessed at Rs.10,000/-. According to the prosecution, the alleged incident was witnessed by the two above named witnesses. The Ellisbridge police was informed about the incident and on the complaint filed by Parsottambhai - owner and occupier of the cabin, the police investigated the crime and charge sheeted both the accused for the aforesaid two offences read with Section 114 of Indian Penal Code.

4. We have considered the deposition of the complainant - P.W.1, Exh.6 and version of two witnesses who have allegedly seen the incident in question. The complainant undisputedly was not present at the cabin. On careful reading of the judgment, it appears that oral evidence has been rightly appreciated by the learned trial Judge and we

do not find any perversity or illegality in the findings. It is settled that when the appellate forum is in agreement with the reasons assigned by the lower Court, then it is not necessary to rewrite those reasons. Three major points were raised before the learned trial Court by the defence counsel and it is observed by the learned trial Judge in para 17 of the decision that third point which is found in the nature of improbability has some force. Two material witnesses i.e., Maheshbhai and Baldevbhai had good relations with the complainant and the evidence of these two witnesses was, therefore, required to be appreciated in that background. When before about 3 to 4 days, the accused persons had attempted to negotiate for settlement of the dispute and were trying to get the peaceful possession on compromise, whether the accused would commit such offence would also be a question. It is true that the accused had probably strong motive to get the premises vacated, but that by itself is not an incriminating strong circumstance unless any other act or omission towards the commission of the crime is found otherwise proved. The important witness Jinaji Mangaji Thakore examined for the purpose, who had allegedly posed as mediator in the talk of compromise, has not supported the case of the prosecution. For the sake of brevity and convenience, we would like to reproduce the relevant para 20 of the judgment under challenge. According to us, in para 20, the learned trial Judge has scanned the evidence of two material witnesses i.e., Maheshbhai and Baldevbhai and they are probable

persons at the spot. It is rightly argued by Mr. Shah that these witnesses ought not to have been addressed as chance witnesses, but they can be said to be the persons interested in the result of the litigation and the result of the case. So, as they were partitioned witnesses, their evidence was required to be scrutinized closely. The evidence of the defence witness examined also cannot be ignored and the learned trial Judge, therefore, has appreciated the evidence of these two witnesses i.e., Maheshbhai and Baldevbhai vis-a-vis the defence witness Laxmanbhai Hirabhai Thakore. We would quote the relevant para 20 of the judgment as under :

"20. So far as the aforesaid last submission is concerned, I think there is considerable force in it. In my opinion, P.Ws. Maheshbhai and Baldevbhai could not be the natural and probable eye witnesses of the incident and their presence near the place of incident at the time of its occurrence appears to be very doubtful and it seems that they are more or less chance witnesses and the story narrated by them pertaining to the incident which they witnesses appears to be very unnatural and unconvincing and considering the fact that the incident occurred late at night, it would be well knigh impossible for them to identify the miscreants even if it is assumed that a street light was burning near the place of incident. I am justified in coming to this conclusion from the various circumstances of the case. According to both these witnesses on that night they had gone to hear the religious discourses in Bhudareshwar Mahadev's Temple situated in Bhudarpura area since 9-00/10-00 P.M. Of course, this part of their evidence is challenged on behalf of

the accused and they have led the evidence of D.W.Laxmansinh Hirabhai Thakor which is to the effect that the said temple was constructed in the private plot by their family and it is their private one and in fact no religious discourses were held by them during the period 18th to 21st March, 1985. It is not doubt true that his evidence is challenged on behalf of the prosecution by alleging that he was giving false evidence on account of his relations with the accused. But I do not think that he would go to the extent of giving false evidence on such point especially when there is nothing to show from the evidence on record that he has close relations with the accused. If his evidence is believed, then the obvious conclusion is that no such religious discourses were being held on the night of the occurrence of his incident and so the reasons assigned by P.Ws.Maheshbhai and Baldevbhai regarding they two being together on that night would be far from truth. But even if his evidence is ignored and it is assumed that P.Ws.Maheshbhai and Baldevbhai had gone to hear religious discourses at the said temple since 9-00/10-00 P.M., and after they were over at about 1-00 A.M., they left together, it does not stand to reason that even thereafter they two would sit together at the residential house of P.W.Maheshbhai till 1.30 to 1.45 A.M., only for the purpose of chitchatting. It appears that such a story is put forward in order to show their presence together at such odd hour of the night. Even thereafter Maheshbhai is shown to have gone out of his house for urination and that is with an oblique motive to show that he could see the incident because otherwise he could not see the same from his house. So it is in the nick of time that he goes for urination and on seeing the incident he raises a shout so that P.W.Baldevbhai could come out from his house and see the incident. At least such happening of the incident and they being the

eye witnesses of it would not happen unless there is co-incidence. Even thereafter they simply saw a white Ambassador car having stopped near Patel Market and that Car's ignition key was not closed and two persons having alighted from the said car and they went near the cabin and then there was fire in the said cabin and both those persons sat in the said car and they could identify only the second one out of them and he was accused no.1 and by the time they reached near the said cabin that car speed away in the lane situated to the right of Patel Market and went away on that road. It does not stand to reason that from such a considerable distance, they would be in a position to identify the miscreants or the culprits and if it was so, then they would be in a position to identify both the culprits or miscreants and not only one of them. In fact it was a dark night and only street light on this road was burning. But it is highly improbable that in the light of it they would be in a position to identify the culprits or the miscreants from such a considerable distance and that too also only one of them and not both. Even inquiry was made by P.S.I., Damor about this white Ambassador car, but he could not get any clue of it. So with this background, the presence of both these eye witnesses at the time of the occurrence of this incident appears to be extremely doubtful and their evidence regarding identification of only one accused out of the two also creates a reasonable doubt. So there is no doubt to my mind that both these eye witnesses appear to be chance witnesses and their presence at the time of the occurrence of this incident at such odd hour of the night appears to be very unnatural, unconvincing and improbable."

The above finding, according to us, cannot

be said to be either perverse or patently illegal. It is not necessary to comment on the scheme of Section 386-A of the Criminal Procedure Code, 1973 and it is settled that the jurisdiction of this Court while dealing with the acquittal appeal is limited. There is no scope of reappreciation of the evidence unless the Appellate Court finds perversity in the finding as well as gross error in appreciation of the evidence. Merely because some other view is found possible of finding of acquittal need not be reversed. According to us, we do not find any merit in the appeal and, therefore, the same is dismissed and the impugned judgment passed by the learned Sessions Judge acquitting the respondents – accused is hereby confirmed.

(C.K.Buch, J)

(Sharad D.Dave, J)

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